

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LMMC, LLC,	§
	§
Plaintiff/Counterclaim Defendant,	§ Case No. 1:23-CV-00950
	§
v.	§ Assigned Judge: Charles P. Kocoras
	§
CALCIUM LLC,	§ Designated Magistrate: M. David Weisman
	§
Defendant/Counterclaim Plaintiff.	§

THIRD JOINT STATUS REPORT

Plaintiff LMMC, LLC (“LMMC”) and Defendant Calcium LLC, (“Calcium”) (collectively, the “Parties”) submit the following Third Joint Status Report, pursuant to the Court’s Order [ECF #52]. The Parties hereby state as follows:

I. Status of Written Discovery

The parties have exchanged written discovery. The parties engaged in two meet and confer conferences that took place on May 10th and May 13th, but the parties have not resolved their issues.

The predominant focus, initially, by LMMC has been on issues related to privilege objections with no privilege log. Calcium originally represented that it was withholding documents¹ because LMMC’s discovery requests allegedly were “limited” and the documents are not responsive. Calcium has more recently represented that it is withholding documents because the documents are privileged, but, again, Calcium failed to provide a privilege log so that LMMC may test that belated assertion. If Calcium is still withholding non-privileged documents that it

¹ In violation of Fed. R. Civ. P. 34(b)(2)(C), Calcium did not identify in its responses whether it is withholding documents pursuant to objections.

may “use to support its claims or defenses,” those documents should have been produced with, or should have supplemented, the November 1, 2023, Rule 26 production exchanged by the parties. If all withheld documents are privileged, counsel for Calcium has represented that it is requesting additional documents from Calcium for the purpose of reviewing and creating a privilege log but that it is not currently in possession of the documents. Calcium did not previously specify a timeframe for completion of this supplementation, but Calcium has provided projected dates below.

As stated in the previous joint status report, LMMC also takes issue with Calcium’s objections to written discovery. LMMC has been willing to forego, at this time, some of the more technical deficiencies in Calcium’s discovery responses if the substantive issues are addressed. If not, LMMC is considering seeking leave to serve additional written discovery on Calcium to try to capture whatever documents Calcium is withholding as purportedly non-responsive/privileged. Alternatively, LMMC will seek another meet and confer and, if necessary, file any appropriate motion with the Court.

Calcium asserts that the singular issue raised by the prior proposed Joint Status Report and the sole discussion regarding outstanding discovery by LMMC’s counsel was limited to producing a privilege log for discovery. It is entirely understandable that in responding to the discovery requests – which production was substantial by Calcium – the litigant would not infer their obligation to include production of communications subject to the attorney client privilege. Regardless, after the meet and confer on May 13, 2024, Calcium is diligently gathering such communications which counsel expects to be provided by May 17, 2024, and that a privilege log will be available no later than May 21, 2024.

As for the deficiencies in LMMC’s production such deficiencies which remain unresolved

include (i) LMMC's failure to produce virtually any intercompany communications regarding the contract, its performance and the dispute; and (ii) failure to produce virtually any communications about the contract, its performance and the dispute with any third parties and specifically its consultant ERO. These communications understandably have significant evidentiary value and without the documents Calcium is unable to prepare and depose LMMC's former employee, Beth Horvatich.

II. Status of Depositions

LMMC filed its notice of deposition and subpoena on May 14, 2024. Frank Muscarello has agreed to accept service, and he was served by e-mail, per agreement, on May 14, 2024. The deposition is scheduled for May 22, 2024, at 10:00 a.m. CST via Zoom. Both parties consent that the protective order shall extend to any testimony that may be the subject of his non-disclosure agreement and the parties shall designate the affected portions of the transcript accordingly.

Calcium has not noticed any depositions to date but is awaiting response by LMMC to voluntarily producing Ms. Horvatich. While Beth Horvatich is no longer employed by LMMC, Calcium posits that LMMC continues to have a direct relationship with both Ms. Horvatich and ERO and could without great burden, cost or expense voluntarily procure her appearance at said deposition. She has been prominently featured in the Plaintiff's own complaint and the discovery issued by the parties and her deposition should not come as a surprise to her or any party.

III. Status of Settlement Discussions

The parties have exchanged settlement offers. Currently, Calcium is awaiting a response from LMMC.

Dated: May 15, 2024

Respectfully submitted,

/s/ Meredith A. Webster

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Respectfully submitted,

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